

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-218276.2**DATE:** April 4, 1985**MATTER OF:** Comdisco, Inc.**DIGEST:**

Protest involving procurement of automatic data processing equipment is dismissed since a protest filed by another concern involving the same procurement is pending before the General Services Board of Contract Appeals. See sections 21.1(a) and 21.3(f)(6) of GAO's Bid Protest Regulations, 49 Fed. Reg. 49417, 49,419, 49,421 (1984) (to be codified at 4 C.F.R. § 21).

Comdisco, Inc., has protested the "acquisition [procurement] of an IBM 3081 computer system by Treasury/Financial Management Service from the Federal Home Loan Mortgage Corporation (FHLMC)." Comdisco filed its protest with our Office on March 11, 1985.

Comdisco argued that:

"FHLMC is not a federal agency and . . . this transfer violates applicable parts of FPMR 101-36 and FPR 1-4.11 and should have been competed. It is also our contention that the [procurement] violates the DPA restrictions imposed by GSA in that they did not make any attempt to compete."

On March 15, 1985, Amdahl Corporation filed a protest concerning this same procurement with the General Services Administration Board of Contract Appeals (GSBCA). Before the GSBCA, Amdahl argued that the above procurement is in "violation of applicable federal procurement statutes, federal procurement regulations, and the Delegation of Procurement Authority (DPA), issued by the General Services Administration." Amdahl also specifically argued that "maximum practicable competition was not sought to satisfy Treasury's automatic data processing requirement."

Amdahl asserts a broad legal challenge to the legal propriety of the procurement and asserts--as does

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Comdisco--that the procurement should have been competed under the DPA involved. Although it does not appear that Amdahl expressly raises the "federal agency" issue raised by Comdisco, the GSBICA has under consideration essentially the same issues that Comdisco raises in its protest to GAO and the GSBICA decision should effectively resolve the issues raised by Comdisco. We also note that Amdahl attached a copy of Comdisco's protest to its GSBICA protest.

In these circumstances, section 21.1(a) of our Bid Protest Regulations, 49 Fed. Reg. 49417 (1984) (to be codified at 4 C.F.R. § 21) provides that:

"After an interested party protests a particular procurement or proposed procurement of automated data processing equipment and services to the General Services Administration Board of Contract Appeals under section 111(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(h)) and while that protest is pending before the Board that procurement or proposed procurement may not be the subject of a protest to the General Accounting Office."

See section 21.3(f)(6) of our Bid Protest Regulations, 49 Fed. Reg. 49,417, 49,421 (1984) (to be codified at 4 C.F.R. § 21), to the same effect.

While a protest is pending at the GSBICA, therefore, these regulations effectively provide for the dismissal of any protest involving that same procurement to GAO in deference to the binding effect of any GSBICA protest decision on the federal agency involved--subject to appeal to the United States Court of Appeals for the Federal Circuit. See section 111(h)(6A) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 759), as added by section 2713(a) of the Competition in Contracting Act of 1984 (Pub. L. 98-369). Since Amdahl's protest of this procurement is before the GSBICA, we dismiss Comdisco's protest under these regulations.

Harry R. Van Cleve
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General Counsel